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No. 02-819

In the Supreme Court of the United States

ANDREW J. KONTRICK, PETITIONER

v.

ROBERT A. RYAN

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether the requirement in Fed. R. Bankr. P. 4004(a) that a complaint objecting to a bankruptcy discharge "shall be filed no later than 60 days" after the meeting of creditors may be forfeited by the debtor.

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INTEREST OF THE UNITED STATES

Pursuant to Section 727 of the Bankruptcy Code, the trustee of the debtor's estate, the United States trustee, or any creditor may object to the granting of a discharge of a debtor. 11 U.S.C. 727(c)(1). Rule 4004(a) of the Federal Rules of Bankruptcy Procedure specifies that "a complaint objecting to the debtor's discharge under § 727(a) of the Code shall be filed no later than 60 days after the first date set for the meeting of creditors * * * ." This case presents the question whether the requirement that the objection to discharge be filed within the 60-day period specified in Rule 4004(a) may be forfeited by the debtor. Because the United States is a creditor in many bankruptcies and, through the United States Trustee Program, supervises the admini-

stration of bankruptcy cases, the United States has a strong interest in the proper interpretation and application of this Rule.[1]

BANKRUPTCY RULES INVOLVED

1. Rules 4004(a) and (b) of the Federal Rules of Bankruptcy Procedure provide:

> (a) **Time for Filing Complaint Objecting to Discharge; Notice of Time Fixed.** In a chapter 7 liquidation case a complaint objecting to the debtor's discharge under § 727(a) of the Code shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 reorganization case, the complaint shall be filed no later than the first date set for the hearing on confirmation. At least 25 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.
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> (b) **Extension of Time.** On motion of any party in interest, after hearing on notice, the court may for cause extend the time to file a complaint objecting to discharge. The motion shall be filed before the time has expired.

2. Rule 9006(b)(1) and (3) of the Federal Rules of Bankruptcy Procedure provide:

> (b) **Enlargement.**

[1] See also 11 U.S.C. 307 (the United States Trustee may appear and be heard on any issue in any bankruptcy case). The United States Trustee Program is created by 28 U.S.C. 581-589. In the administration of that program, the United States Trustee files hundreds of complaints each year that object to the entry of a discharge or seek revocation of a discharge.

> (1) *In General.* Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules * * *, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.
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> * * * * *
>
> (3) *Enlargement limited.* The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules.

STATEMENT

1. In a Chapter 7 liquidation case, a debtor who satisfies the several conditions set forth in Section 727(a) of the Bankruptcy Code is to receive an order discharging his debts. 11 U.S.C. 727(a).[2] A discharge

[2] Under Section 727(a) of the Bankruptcy Code, a court may not grant a discharge if the debtor (i) is not an individual, (ii) has concealed, transferred or destroyed property of the estate in the year preceding bankruptcy or during the bankruptcy case, (iii) has destroyed books and records, (iv) has knowingly given a false oath or account, (v) has presented or used a false claim, (vi) has attempted to obtain money by acting or forbearing to act, (vii) has withheld documents relating to the debtor's property or financial affairs, (viii) has failed to explain a loss or deficiency of assets, (ix) has refused to obey court orders, (x) has refused to testify in the

granted under this Section frees the debtor from all debts that arose before the bankruptcy case commenced other than those excepted from discharge under Section 523 of the Code. 11 U.S.C. 727(b).[3]

The trustee, the United States trustee, or any creditor may object to the granting of a discharge under Section 727. 11 U.S.C. 727(c)(1). Such an "objection[] to discharge" is a "core proceeding" within the jurisdiction of the bankruptcy court. 28 U.S.C. 157(b)(2)(J). Nothing in the Bankruptcy Code, however, specifies a time or deadline for filing such an objection. Instead, the time frame for filing a complaint objecting to a discharge is set forth in Rule 4004(a) of the Federal Rules of Bankruptcy Procedure. That Rule states in relevant part that "a complaint objecting to the debtor's discharge under § 727(a) of the Code shall be filed no later than 60 days after the first date set for the meeting of creditors * * * ." Rule 4004(b) then goes on to provide that "[t]he court may for cause extend the time to file a complaint objecting to discharge" if the motion is "filed before the time has expired." And, Rule 9006(b)(3), which addresses motions for enlargement of

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case, (xi) has received a chapter 11 discharge within six years of the filing of the current bankruptcy case, (xii) has received a chapter 12 or 13 discharge within six years in a case in which the debtor did not pay at least 70 percent of the allowed unsecured claims or, in certain circumstances, all of those claims, unless the court approves a written waiver of discharge after the order for relief in the case has been entered. 11 U.S.C. 727(a)(1)-(10).

[3] Many specific types of debts are excepted from discharge by Section 523. See, *e.g.*, 11 U.S.C. 523(a)(1) (certain debts "for a tax or a customs duty"); 11 U.S.C. 523(a)(2)(A)) (certain debts for money obtained by "false pretenses * * * or actual fraud"); 11 U.S.C. 523(a)(6) (debts for "willful and malicious injury by the debtor").

time generally, further provides that "the court may enlarge the time for taking action under Rule[ ] 4004(a) * * * only to the extent and under the conditions stated in [that] rule." Fed. R. Bankr. P. 9006(b)(3).[4]

2. On April 4, 1997, petitioner filed a voluntary petition for bankruptcy under Chapter 7. Pet. App. 1. Respondent, who is one of petitioner's creditors, sought and obtained three separate extensions of the 60-day deadline for filing an objection to discharge under Rule 4004(a). The final extension was until January 13, 1998. Pet. App. 3-4, 26.

On January 13, 1998, respondent filed an adversary complaint that objected to petitioner's discharge. In that complaint, respondent alleged that petitioner had transferred property within one year of filing bankruptcy with intent to defraud and should therefore be denied a discharge under 11 U.S.C. 727(a)(2)-(5) of the Bankruptcy Code. See Pet. App. 4, 26; note 2, *supra*. On May 6, 1998, without an additional court-approved extension, respondent filed an amended complaint that asserted an additional objection to discharge. The new objection was based on respondent's allegation that

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[4] An analogous provision provides for objections to the discharge of a particular debt pursuant to 11 U.S.C. 523(c). See note 3, *supra*. Rule 4007(c) specifies that "[a] complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a) * * * . On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired." Because the language in Rules 4007(c) and 4004(a) and (b) are virtually identical, courts have found it appropriate to consider decisions construing Rule 4007(c) in determining whether the time limit set forth in Rule 4004(a) may be forfeited. See Pet. App. 8 n.3.

petitioner had fraudulently transferred money to his wife by removing his name from a family checking account and then continuing to deposit his salary into the account. According to the amended complaint, such transfers were fraudulent and therefore provided an additional basis for denying the discharge under Section 727(a)(2)(A). See Pet. App. 4, 27.

Petitioner filed an answer in which he denied liability on the asserted fraudulent transfers. He did not, however, object to the amended complaint on the ground that it was filed beyond the time permitted by Rule 4004. Pet. App. 4.

3. The bankruptcy court granted respondent's motion for summary judgment. The court concluded that the fraudulent transfers described in the amended complaint were appropriate grounds for denying petitioner a discharge under Section 727(a)(2). Pet. App. 4-5.

Petitioner then moved for reconsideration. In that motion, he argued for the first time that the allegations of the amended objection to discharge were untimely and that the court was therefore deprived of "jurisdiction" to deny his discharge on those grounds. The bankruptcy court held that the time limit set forth in Rule 4004(a) is not "jurisdictional" and that, by not raising a timely objection to the grounds stated in the amended complaint, petitioner had forfeited his objection under that Rule. Pet. App. 5, 29.

4. The district court upheld the bankruptcy court ruling. Pet. App. 25-38. The court agreed with the holding of *In re Santos*, 112 B.R. 1001, 1008 (B.A.P. 9th Cir. 1990), that "the timeliness of a dischargeability complaint presents an affirmative defense that must be raised in an answer or responsive pleading [and that] [i]f the defense is not raised in the answer or responsive

pleading, it is generally waived." Pet. App. 31-32.[5] Adopting the reasoning of the Second Circuit in *In re Benedict*, 90 F.3d 50, 54 (1996), and of the Fourth Circuit in *Farouki* v. *Emirates Bank International, Ltd.*, 14 F.3d 244, 248 (1994), the court noted that the filing requirement set forth in Rule 4004(a) is not different from "a statutory provision that imposes a filing deadline" and that "statutory filing deadlines are generally subject to the defenses of waiver, estoppel, and equitable tolling." Pet. App. 31. The court therefore concluded that, "[b]y not raising the timeliness of the family account claim in his responsive pleading, [petitioner] waived the objection." *Id.* at 33.

5. The court of appeals affirmed. Pet. App. 1-23. The court emphasized that the statutes that grant jurisdiction to the bankruptcy courts "over bankruptcy matters do not indicate that timeliness of objections to discharge is a jurisdictional predicate." *Id.* at 12 (citing 28 U.S.C. 157(b)(2)(J)). The court agreed with the holding of the Second and Fourth Circuits that the timely filing requirement of Rule 4004(a) is not "jurisdictional" and, like other limitations provisions,

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[5] The issue in this case is more accurately described as one of forfeiture rather than waiver. "Waiver is different from forfeiture. Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the 'intentional relinquishment or abandonment of a known right.'" *United States* v. *Olano*, 507 U.S. 725, 733 (1993) (quoting *Johnson* v. *Zerbst*, 304 U.S. 458, 464 (1938)). Although in other contexts that distinction has material consequences, that is not the case for Rule 4004. And, since the lower court opinions use these terms interchangeably, this brief will not retain the distinction. See *Freytag* v. *Commissioner*, 501 U.S. 868, 895 n.2 (1991) (Scalia, J., concurring) ("I shall not try to retain the distinction between waiver and forfeiture throughout this opinion, since many of the sources I shall be using disregard it.").

may therefore be waived. Pet. App. 14 (citing *In re Benedict*, 90 F.3d at 53-54; *Farouki* v. *Emirates Bank International, Ltd.*, 14 F.3d at 248).

The court of appeals noted that petitioner did not challenge the timeliness of respondent's objection to discharge under Rule 4004(a) prior to his motion for rehearing in the bankruptcy court. Pet. App. 18. The court of appeals concluded that petitioner waived the affirmative defense that the objection to discharge was untimely by not raising that defense until *after* the court ruled on the merits of the objection. *Ibid.*

SUMMARY OF ARGUMENT

1. The court of appeals correctly determined that the time limit set forth in Rule 4004(a) is subject to forfeiture. The core jurisdiction of the bankruptcy courts expressly encompasses all "objections to discharge." 28 U.S.C. 157(b)(2)(J). In that statute, Congress did not impose, as a jurisdictional predicate, a requirement that objections to discharge be filed in a timely manner under the bankruptcy rules. To the contrary, while this statute requires that *some* matters be timely asserted as a prerequisite of core jurisdiction, the statute contains no such requirement for objections to discharge. Nothing in this jurisdictional statute thus indicates that bankruptcy courts have jurisdiction only over objections to discharge that are timely filed under the bankruptcy rules or that a debtor otherwise cannot forfeit an argument about the timeliness of an objection to discharge by failing to raise the argument.

Moreover, the bankruptcy rules themselves specify that they are not to be construed either to extend or limit the jurisdiction of the bankruptcy courts. Fed. Bank. R. Proc. 9030. The filing deadline for objections to discharge in Rule 4004(a) is thus expressly not "jurisdictional." Instead, like other filing deadlines, it operates "like a statute of limitations" and is therefore "subject to [the defenses of] waiver, estoppel and equitable tolling." *Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982).

2. That does not, of course, mean that the doctrine of forfeiture—or equitable defenses such as tolling or estoppel—would always be applicable under Rule 4004(a) and that a failure to raise an argument about the timeliness of an objection to discharge would always result in forfeiture of that argument. In this case, however, petitioner no longer argues that a factual basis for a finding of forfeiture does not exist. Instead, petitioner incorrectly urges only that the timely filing requirement of Rule 4004(a) is "jurisdictional" and therefore may never be forfeited.

3. Petitioner errs in claiming that the decision of the court of appeals conflicts with this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992). In *Taylor*, the Court held that the time limits for filing objections to a debtor's list of exempt property in Rule 4003 apply even for exemptions that are not claimed in "good faith." *Id.* at 644-645. That decision does not suggest that the deadline in Rule 4003 is jurisdictional and does not support a contention that a debtor cannot forfeit the defense that an objection to discharge is untimely under Rule 4004(a).

ARGUMENT

THE TIME LIMITS IMPOSED IN RULE 4004(a) FOR FILING AN OBJECTION TO DISCHARGE MAY BE FORFEITED BY THE DEBTOR

This Court has made clear that, unless strict compliance with a filing deadline is a prerequisite to the jurisdiction of the court, "[s]tatutory filing deadlines are generally subject to the defenses of waiver, estoppel, and equitable tolling." *United States* v. *Locke*, 471 U.S. 84, 94 n.10 (1985). See *Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982). In this case, the court of appeals correctly held that the time limits imposed by Rule 4004(a) of the Federal Rules of Bankruptcy Procedure are not "a jurisdictional prerequisite to suit in federal court, but [are instead] a requirement that, like a statute of limitations, is subject to waiver, estoppel and equitable tolling" (*Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. at 393).

A. The Federal Rules Of Bankruptcy Procedure Do Not Have Jurisdictional Effect

1. The jurisdiction of the lower federal courts is created by statute, not by rules of practice. As this Court has emphasized, "[i]t is axiomatic" that the rules of practice and procedure established by this Court for the lower federal courts can neither create nor destroy the jurisdiction that Congress has created. *Owen Equipment & Erection Co.* v. *Kroger*, 437 U.S. 365, 370 (1978); see *Snyder* v. *Harris*, 394 U.S. 332, 337 (1969); *Sibbach* v. *Wilson & Co.*, 312 U.S. 1, 9-10 (1941). Instead, the procedural rules adopted by this Court "merely prescribe the method by which the jurisdiction granted the courts by Congress is to be exercised."

Wright, Miller & Marcus, *Federal Practice & Procedure* § 3141, at 485 (1997).

As pertinent to this case, Congress has specified that an "objection[] to discharge" is a "core proceeding" within the jurisdiction of the bankruptcy court. 28 U.S.C. 157(b)(2)(J). Moreover, Rule 9030 specifies that the bankruptcy rules of practice "shall not be construed to extend or limit the jurisdiction of the courts or the venue of any matters therein." Fed. R. Bankr. P. 9030.[6] Accordingly, nothing in Rule 4004—including the time limit for the filing of objections to discharge set forth in that rule—"limit[s] the jurisdiction of the courts" over such objections. Fed. R. Bankr. P. 9030.

In order for a time limit for filing a claim to constitute a true "jurisdictional prerequisite to suit in federal court" (*Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. at 393), it would need to be established by Congress, not in a rule of practice or procedure adopted by this Court.[7] In this case, however, the statute that creates

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[6] Rule 82 of the Federal Rules of Civil Procedure similarly states that the rules of civil procedure "shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions therein." Fed. R. Civ. P. 82.

[7] In rejecting the assertion that a time requirement in a rule of practice is "jurisdictional and cannot be waived," the Court stated in *Schact* v. *United States*, 398 U.S. 58, 64 (1970), that "it must be remembered that this rule was not enacted by Congress but was promulgated by this Court under authority of Congress to prescribe rules * * * . The procedural rules adopted by the Court for the orderly transaction of its business are not jurisdictional and can be relaxed by the Court in the exercise of its discretion when the ends of justice so require." Justice Harlan similarly emphasized in his concurring opinion in *Schact* that "this Court on occasion waives the time limitations imposed by its own

jurisdiction over "objection[s] to discharge" in bankruptcy cases contains no time limit for filing such claims. 28 U.S.C. 157(b)(2)(J). While this jurisdictional statute requires that some motions or proceedings in bankruptcy cases must be brought in a "timely" manner, the statute contains no such requirement for objections to discharge.[8] Because, as it applies to

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Rules and yet treats time requirements imposed by statute as jurisdictional." *Id.* at 68.

To be sure, a rule may, by its express terms or structure, require absolute compliance with a time limit and thus preclude reliance on equitable doctrines or waiver. For example, the time period for filing a notice of appeal may be strictly enforced even when it is fixed by rule, rather than statute. See, *e.g.*, Fed. R. App. P. 4(b)(1)(A) (10-day limit for appeal by a criminal defendant). While courts sometimes refer to such provisions as "jurisdictional" in an effort to describe the strict nature of the timeliness requirements, they are not true limits on jurisdiction. See *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 90 (1998) ("Jurisdiction, it has been observed, 'is a word of many, too many, meanings.' "); *Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. at 395 (the deadline for filing EEOC complaints is subject to equitable estoppel even though "our cases contain scattered references to the timely-filing requirement as jurisdictional").

[8] As the court of appeals emphasized (Pet. App. 12):

> Matters of timeliness are, notably, present in other provisions. For instance, section 157(b)(3) states that "[t]he bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceedings is a core proceeding." 28 U.S.C. § 157(b)(3). Further, for a party to obtain de novo review in the district court of a bankruptcy court's findings of fact and conclusions of law in a non-core proceeding, that party must "timely and specifically object[]." 28 U.S.C. § 157(c)(1). These references to timeliness in sections other than the grants of jurisdiction support the view that timeliness is not a prerequisite to the bankruptcy court's exercise of jurisdiction in a core proceeding such as [petitioner's] objection to discharge.

objections to discharge, this statute "does not limit jurisdiction to those cases in which there has been a timely filing," compliance with the time limitations of Rule 4004 is not a "jurisdictional prerequisite." *Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. at 393.

The time limit for filing objections to discharge is set forth in a procedural rule adopted by this Court that has no jurisdictional effect and does not preclude application of principles of waiver or forfeiture. The bankruptcy rules, including Rule 4004(a), are designed to assist the bankruptcy courts in the management of cases and to promote the "'expeditious and economical administration' of cases under the Code." Fed. R. Bankr. P. 1001 advisory committee's note. These rules are to "be construed to secure the just, speedy, and inexpensive determination of every case and proceeding;" they are not to be construed to extend or limit the court's jurisdiction. Fed. R. Bankr. P. 1001, 9030.

The relevant jurisdictional provision in this case has no time limit for objections to discharge. It thus stands in stark contrast to jurisdictional provisions, such as the Federal Tort Claims Act, which commands that failure to comply with a filing requirement means that "an action shall not be instituted" and that "a tort claim against the United States shall be forever barred * * *." 28 U.S.C. 2675(a), 2401(b). Similarly, 28 U.S.C. 2107 specifies that, "[e]xcept as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree." The Court has therefore noted that "the filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the

district court of its control over those aspects of the case involved in the appeal." *Griggs* v. *Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982).

Unlike a timely notice of appeal, which is a prerequisite for the jurisdiction of the court of appeals, the filing of a timely objection to discharge neither confers nor deprives the bankruptcy courts of jurisdiction over a creditor's discharge. That jurisdiction is established by statute (28 U.S.C. 157(b)(2)(J)), and the bankruptcy rules merely "govern procedure in [such] cases." Fed. R. Bank. P. 1001.

2. This Court's recent decision in *Young* v. *United States*, 535 U.S. 43 (2002), supports the conclusion that the time deadline in Rule 4004(a) is not jurisdictional. In *Young*, the Court addressed the three-year lookback period in Section 507(a)(8)(A)(i) of the Bankruptcy Code, which allows the government to collect taxes "for which a return was due within three years before the filing of an individual debtor's petition." *Id.* at 44. The Court held in *Young* that the period established in this limitations provision is subject to equitable tolling. *Id.* at 47. The Court stated that this statute "prescribes a period within which certain rights (namely, priority and nondischargeability in bankruptcy) may be enforced" and rejected the argument that the statutory lookback period was a "substantive component" of the Code. *Id.* at 47, 48. Instead, the Court found it to be a limitation provision that "serves the 'same basic policies [furthered by] all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." *Id.* at 47. The Court emphasized that, while the purpose of the period is to "encourage[ ] the IRS to protect its rights" before the three-year period has elapsed (*id.* at 47-48), "nothing in the Bankruptcy Code precludes

equitable tolling of the lookback period." *Id.* at 47. Instead, the Court concluded that such limitations periods in bankruptcy cases are presumptively subject to equitable tolling because bankruptcy courts "are courts of equity and apply the principles and rules of equity jurisprudence." *Id.* at 50 (citations and internal quotation omitted).

Those same principles apply here. See *In re Phillips*, 288 B.R. 585, 592-593 (Bankr. M.D. Ga. 2002) (applying *Young* to Rule 4007). The deadline in Rule 4004(a) serves the same purposes furthered by all limitations periods—finality, repose, and certainty about liability. As *Young* makes clear, these basic purposes are not jeopardized by recognizing the applicability of equitable defenses in particular cases.

B. The Time Limit For Filing Objections to Discharge In Rule 4004(a) Of The Bankruptcy Rules Of Practice And Procedure May Be Forfeited By The Debtor

1. Because the timely filing requirements of the bankruptcy rules do not constitute "a jurisdictional prerequisite to suit in federal court," they are to be treated "like a statute of limitations" and are therefore presumptively "subject to waiver, estoppel and equitable tolling." *Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. at 393. The fact that the time limit in Rule 4004(a) is presumptively "subject to" the doctrine of waiver—and to defenses such as equitable tolling or estoppel—does not, of course, mean that these defenses would always be available under Rule 4004(a) or that a failure to point out that an objection to discharge is untimely will always prove fatal. In the present case, however, petitioner does not claim that appropriate factual grounds for a finding of waiver are not present. See Pet. App. 18, 31, 33. Instead, petitioner incorrectly

urges only that the timely filing requirement of Rule 4004(a) is "jurisdictional" and therefore may never be waived. That contention is incorrect for the reasons already described.

Moreover, much of petitioner's argument is actually directed to an issue that is not presented in this case. Petitioner insistently maintains that, taken together, the structure of Rule 4004(a) (which establishes the time for objecting to discharge) and of Rule 9006(b)(3) (which provides that the time for such objections may be enlarged only when timely application for an extension is made pursuant to Rule 4004(a)) require the conclusion that "a court has no authority to *extend the deadlines* based on equitable exceptions imported from outside the rules." Pet. Br. 13 (emphasis added); see also *id.* at 28 (arguing courts have no equitable authority "to extend the time for objecting to discharge"). This case, however, does not involve the issue of equitable tolling, for it does not involve a timely objection to an untimely application to "extend the deadlines" for filing an objection to discharge under Rule 4004(a). Instead, it involves the distinct issue of whether petitioner *waived his right to object* to an objection to discharge that was admittedly untimely. The question whether, under these Rules, equitable tolling doctrines would permit a court to "extend" the deadline is thus not presented here. And, because that question is not presented here, the Court need not address whether the time restrictions in these Rules are in such "emphatic form" that they negate the "presumption" that equitable tolling is available to remedy "unfairness in individual cases" by extending the filing deadline. *United States* v. *Brockamp*, 519 U.S. 347, 350, 353 (1997).

2. The filing deadline in Rule 4004(a) is designed to further the prompt administration of bankruptcy estates and to allow the debtor to enjoy finality and certainty in relief from financial distress. Those purposes do not preclude application of the doctrine of waiver in this case. As petitioner acknowledges, the doctrine of waiver is designed to "promote finality" and efficiency in the adjudicative process (Pet. Br. 21). "[T]he debtor, if he or she asserts his or her rights in a timely manner, will not suffer any impairment of his or her interest in certainty, finality and prompt administration." *In re Santos*, 112 B.R. 1001, 1008 (B.A.P. 9th Cir. 1990).

Indeed, this case presents a core example of a waiver of rights in litigation, for petitioner failed to challenge the timeliness of respondent's objection to discharge until *after* the court had ruled on the merits of that objection. See page 6, *supra*. Recognizing that the bankruptcy rules are to be interpreted and applied to achieve "the just, speedy, and inexpensive determination of every case and proceeding" (Fed. R. Bank. P. 1001), the court of appeals properly concluded that the doctrine of waiver applies in this case.

C. The Decision Below Is Not Inconsistent With *Taylor* v. *Freeland & Kronz*

Petitioner mistakenly argues (Pet. Br. 19-21) that the decision in this case is inconsistent with the decision of this Court in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992).[9] In *Taylor*, the Court held that the time limits

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[9] Petitioner also erroneously relies (Pet. Br. 21) on *Carlisle* v. *United States*, 517 U.S. 416 (1996), which concerned the proper application of Rule 29(c) of the Federal Rules of Criminal Procedure. The Court held in *Carlisle* that Rule 29(c) is "plain and unambiguous" and does not permit untimely motions for acquittal,

in Rule 4003 for filing objections to a debtor's list of exempt property apply even for exemptions that are not claimed in "good faith." *Id.* at 644-645. Under the Bankruptcy Code, a debtor may claim certain property as exempt from his bankruptcy estate. 11 U.S.C. 522(b). To do so, "[t]he debtor shall file a list of property the debtor claims as exempt. * * * Unless a party in interest objects, the property claimed as exempt on such list is exempt." 11 U.S.C. 522(*l*). Bankruptcy Rule 4003(b) specifies that the trustee or any "creditor may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors." Fed. R. Bankr. P. 4003(b).

The debtor in *Taylor* had listed as exempt property the proceeds from her pending employment discrimination suit. Even though only a portion of these proceeds would have been allowable as an exemption, the trustee decided not to object to the claimed exemption because he thought the debtor's claim "might be a 'nullity.'" 503 U.S. at 641. In a settlement of the discrimination suit that followed a verdict in favor of the debtor, the debtor received $110,000. The trustee thereafter filed a complaint to obtain a turnover of the funds to the estate. *Ibid.*

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even when the failure to make a timely filing is assertedly the result of "excusable neglect." 517 U.S. at 421. Indeed, the Rules involved in that case specified that "excusable neglect" is not a valid basis for a failure to comply with the time limits in Rule 29(c). *Id.* at 421. Moreover, in *Carlisle*, the government timely argued that the defendant's motion for acquittal "should be denied as untimely" (*id.* at 418), and the Court therefore had no occasion to address or consider whether the government could waive its right to challenge an untimely filing under Rule 29(c). The decision in *Carlisle* thus has no application to the present case.

The Court framed the issue in *Taylor* as "whether the trustee may contest the validity of an exemption after the 30-day period if the debtor had no colorable basis for claiming the exemption." 503 U.S. at 639. The Court held that the trustee "could have made a valid objection under § 522(*l*) and Rule 4003 if he had acted promptly * * * [but] that his failure to do so prevents him from challenging the validity of the exemption now." 503 U.S. at 642. The Court noted that Rule 4003(b) expressly gives the trustee and creditors 30 days from the initial creditors' meeting to object and that, "[b]y negative implication, the Rule indicates that creditors may not object after 30 days 'unless, within such period, further time is granted by the court.'" 503 U.S. at 643. The Court concluded that there was no statutory basis for limiting this 30-day requirement to exemptions that the debtor claimed in good faith under Section 522(*l*). 503 U.S. at 644-645.

The decision in *Taylor* does not describe the filing deadline contained in Rule 4003(b) as jurisdictional. Nor, as the court of appeals noted in this case, did the Court hold that the debtor had an unlimited time in which to object to an untimely objection by the trustee. Pet. App. 15 n.4. Indeed, the question whether the 30-day limitation period in Rule 4003(b) was subject to waiver or equitable tolling was simply not raised or presented in the petition in that case.[10] The Court in

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[10] As Justice Stevens noted in his dissenting opinion in *Taylor*, the Court did not address in that case whether "the doctrine of equitable tolling applies to the 30-day limitations period in Federal Rule of Bankruptcy Procedure 4003(b)." 503 U.S. at 646. Justice Stevens suggested that, if the Court had reached that question, it would have found "ample authority" for such a holding. *Ibid.* The Court, however, expressly declined to consider arguments in *Taylor* that were not raised below and that were not contained in

Taylor thus neither addressed nor unsettled the established rule that filing deadlines in procedural rules—like statutes of limitation generally—are presumptively "subject to waiver, estoppel and equitable tolling." *Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. at 393.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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"the questions set forth in the petition" for writ of certiorari in that case. 503 U.S. at 645 (quoting Sup. Ct. R. 14.1(a)).

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